

**EXHIBIT D**

1

67arvilh

1 UNITED STATES DISTRICT COURT  
1 SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 UNITED STATES OF AMERICA

4 v.

05 Cr. 621 (KMK)

5 ALBERTO VILAR

Hearing

5 GARY TANAKA,

6 Defendant.

6 -----x

New York, N.Y.

July 10, 2006

9:45 a.m.

8 Before:

9 KENNETH M. KARAS

District Judge

11 MICHAEL J. GARCIA

11 United States Attorney for the

12 Southern District of New York

12 One St. Andrew's Plaza

13 New York, N.Y. 10007

13 DEIRDRE A. McEVOY

14 MARC O. LITT

14 Assistant United States Attorneys

15 JEFFREY C. HOFFMAN, ESQ.

16 SUSAN C. WOLFE, ESQ.

16 Attorneys for Defendant Vilar

17 Hoffman & Pollik, LLP

17 260 Madison Avenue, 22nd Floor

18 New York, New York 10016

18 (212) 679-2900

19 GLENN C. COLTON, ESQ.

20 Attorney for Defendant Tanaka

20 Wilson Sonsini Goodrich & Rosati (NYC)

21 12 East 49th Street, 30th Floor

21 New York, New York 10017

22 (212) 999-5804

23 STEVEN G. KOBRE, ESQ.

23 Attorney for Defendant Tanaka

24 Kobre & Kim LLP

24 800 Third Avenue

25 New York, New York 10022

25 (212) 488-1200

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

67arvilh

2

15 Q. What I am asking you is, other than paragraph 6A, there is  
16 nothing else in your submission to the magistrate to support  
17 your belief that there was probable cause to show that the  
18 Mayers invested in Amerindo U.S., correct?

19 A. That's correct.

20 Q. On page 4, paragraph B as in "boy," you describe an  
21 investment made by Lily Cates of a million dollars in or about  
22 1988, correct?

23 A.. That's correct.

24 Q. Do you anywhere in this affidavit describe that as a result  
25 of that million-dollar investment made in or about 1988 by Lily

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

17

67arvilh

Fraterrigo - cross

1 Cates, she withdrew 6 to \$7 million from, quote-unquote, any of  
2 the Amerindo entities?

3 A. No.

4 Q. Did you intentionally leave that information out?

5 MS. McEVOY: Objection.

6 THE COURT: Overruled.

7 A. No.

8 Q. On page 6, paragraph F as in Frank, which begins on the  
9 bottom of page 5, if you go four lines down on the bottom of  
10 page 6, you state, "Tens of millions of dollars were being  
11 funneled to overseas accounts." Do you see that?

12 A. On page 6?

13 Q. 6, four lines down from the top.

14 A. Yes.

15 Q. Can you describe what you meant by the word "funneled."

16 MS. McEVOY: Objection.

17 THE COURT: Overruled.

18 A. Transferred.

19 Q. Did you use the word "transferred" in other places in the  
20 affidavit?

21 A. I believe so.

22 Q. Can you tell us why you didn't use it there.

23 A. I don't know. I don't recall.

24 Q. Was it your choice to put in the word "funneled" or was  
25 that put in by whoever made up the affidavit?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

18

67arvilh

Fraterrigo - cross

1 A. It wasn't my choice.

2 Q. If you look at page 6, in the same paragraph, the next to  
3 the last line of that paragraph, you say that there is reason  
4 to be concerned that other investors are likewise being  
5 victimized by Vilar and Tanaka. Do you see that?

6 A. Yes.

7 Q. You understood when you signed this sworn affidavit, did  
8 you not, that there is a significant different between the  
9 standard described here, "reason to be concerned," as opposed  
10 to the much higher standard probable cause, correct?

11 A. That's correct.

12 Q. So you knew that the reason you used the term "reason to be  
13 concerned that other investors are likewise being victimized by  
14 Vilar and Tanaka" was because you didn't have probable cause to  
15 believe that other victims -- excuse me -- that other investors  
16 were being likewise victimized by Vilar and Tanaka, correct?

17 A. I felt this was a reason to be concerned, as it is worded  
18 in the affidavit.  
19 Q. Had you had probable cause to believe that other investors  
20 were being victimized had you had information that went to that  
21 higher level, then you would have used that term if, you had  
22 it, correct?  
23 A. That's correct.  
24 Q. If you would looked page 7, paragraph numbered 8, you  
25 state, the fourth line from the bottom of paragraph number 8,  
SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

67arvilh Fraterriago - cross 19  
1 based on your training and experience, you know that  
2 individuals involved in financial fraud schemes like that  
3 described above frequently maintain at their places of business  
4 for substantial periods of time records and materials which  
5 evidence the operation of such schemes. Do you see that?  
6 A. Yes.  
7 Q. The investigation that you had been doing had revealed to  
8 you, had it not, at the time that you made this affidavit and  
9 as described in this affidavit (1) that there were guaranteed  
10 fixed rate deposits that certain people said they cannot redeem  
11 their money from -- correct?  
12 A. Correct.  
13 Q. -- and (2) that Lily Cates indicated she had invested a  
14 million dollars in 1988, approximately, and then later 5  
15 million in what was to be an SBIC investment, correct?  
16 MS. McEVOY: Your Honor, no objection as to what is in  
17 the affidavit, but to the extent that Mr. Hoffman's question is  
18 going beyond that.  
19 THE COURT: Let's wait until he gets there. That is  
20 what is in the affidavit?  
21 Q. That is what is in the affidavit, correct?  
22 A. Yes, that's correct.  
23 Q. Have you ever had any prior experience, as you described in  
24 the line I just read to you, concerning other, quote-unquote,  
25 frauds that involved guaranteed fixed-rate deposits?  
SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

67arvilh Fraterriago - cross 20  
1 A. No.  
2 Q. Or that involved SBIC investments?  
3 A. No.  
4 Q. In paragraph number 9 on page 7 you say there is probable  
5 cause to believe that the following records and  
6 instrumentalities of the fraudulent scheme described above and  
7 other evidence related to and evidencing such crimes are  
8 located at the premises.  
9 Other than Lily Cates having told you that at some  
10 time between 2002 and 2004, as stated in your affidavit, she  
11 had been at the premises on Park Avenue and had seen  
12 approximately 80 boxes that she said Mr. Vilar told her had  
13 information that would be used in evaluating her investment --  
14 are you with me?  
15 A. Yes. I am just making sure that is what is in the  
16 affidavit.  
17 Q. Let me ask you this. Do you remember putting that in the  
18 affidavit?

29

Fraterriego - cross

3 A. Yes.

6 A. That's correct.

8 A. That's correct.

14 A. That's correct.

19 A. No.

24 A. That's correct.

SOUTHERN DISTRICT REPORTERS, P.C.

30

Fraterriego - cross

4 A. That's correct.

13 A. That's correct.

18 A. No.

24 A. That's correct.

SOUTHERN DISTRICT REPORTERS, P.C.

31



2 A. Yes.  
3 Q. One of them was not listed in paragraph E, that's correct.  
4 So I will repeat the question. Isn't it accurate to say that  
5 you put no information in your submission to the magistrate for  
6 this warrant that would support probable cause to seize copies  
7 of correspondence sent to or received from clients other than  
8 those five from whenever the material originated 10, 20, 30  
9 years ago to the date you filed this, correct?  
10 A. That's correct.  
11 Q. Once again, it would be correct that there was nothing  
12 limiting you, nothing restricting you from being specific as to  
13 the specific clients whose copies of correspondence you wanted,  
14 correct?  
15 A. That's correct.  
16 Q. The same answer would be forthcoming from you regarding the  
17 next category of other documents, correct?  
18 A. That's correct.  
19 Q. If you would look at paragraph B as in "boy" on page 8.  
20 There you ask for documents concerning specific entities, to  
21 wit, Bear Stearns, Amerindo Management, Inc., Sub ACM 26, which  
22 you then call AM1, Amerindo Technology Growth Fund, Inc.,  
23 Amerindo Technology Growth Fund II, Inc., and Techno Raquia  
24 S.A., and you call those collectively the Amerindo brokerage  
25 accounts, correct?

SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

34

67arvilh Fraterrigo - cross

1 A. That's correct.  
2 Q. Is the reason you specifically state those entities that  
3 you referred to as the Amerindo brokerage accounts because  
4 those are the only brokerage account entities that you put  
5 information in this affidavit for that would support probable  
6 cause to take the documents underlying those accounts?  
7 MS. McEVOY: Objection.  
8 THE COURT: Sustained.  
9 Q. Would it be accurate to say that other than in those  
10 accounts, in your view, there is no information in your  
11 submission to the magistrate for this warrant that would  
12 support probable cause for any other brokerage account  
13 documents than the ones named in paragraph B as in "boy"?  
14 A. That's correct.  
15 Q. This is redundant, but to be clear, because my own question  
16 was a little hazy, what you have just sworn to is that other  
17 than these named brokerage accounts in paragraph B as in "boy"  
18 on page 8, there was no information in the documents you  
19 submitted to the magistrate that would support probable cause  
20 of wrongdoing concerning any other brokerage accounts, correct?  
21 A. That's correct.

MR. HOFFMAN: May I have one moment, your Honor?

THE COURT: Of course.

24 Q. Looking at the paragraph we were just talking about, page  
25 8, paragraph B as in "boy", would it be accurate to say that

SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

35

67arvilh Fraterrigo - cross

1 Amerindo Internet Fund is not mentioned there.

2 A. That's correct.

3 Q. Let me show you what is being taken from the box labeled

6 correct?  
7 A. Correct.  
8 Q. Let me ask you this. Since I am not prepared to do these  
9 in bulk, have you gone through the documents in the various  
10 boxes that you supplied to the defense that were brought here  
11 in court?  
12 A. Yes.  
13 Q. Would it be accurate to say that there are a number of  
14 brokerage accounts in addition to the ones I just showed you  
15 whose documents were received which accounts were not named in  
16 paragraph B as in "boy" page 8 and for which there was no  
17 probable cause submitted to the magistrate?  
18 A. They were seized, but they were seized under a different  
19 paragraph of the affidavit. I had authority to seize it.  
20 Q. I am not asking you whether or not there was a paragraph  
21 that gave you authority to seize a whole bunch of things. That  
22 is not my question.  
23 A. OK.  
24 Q. My question is, as with the ones I just showed you, that  
25 there are other brokerage accounts that were seized that are  
SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

38

67arvilh Fraterrigo - cross  
1 not named in paragraph B as in "boy" on page 8 of the affidavit  
2 and for which, as with the others you just testified to, there  
3 was no probable cause to support the seizure, correct?  
4 A. There was no probable cause in the --  
5 Q. In the papers submitted to the magistrate?  
6 A. That's correct.  
7 Q. Thank you. In the same paragraph B as in "boy," page 8, if  
8 you look three lines up from the bottom of that paragraph, you  
9 stated that there was probable cause to seize, quote, other  
10 documents reflecting or relating to securities transactions  
11 entered into on behalf of clients by any current or former  
12 Amerindo entity, affiliate, principal, officer, and employee.  
13 Do you see that?  
14 A. Yes.  
15 Q. Would it be accurate to say that other than the five  
16 individuals previously mentioned, there was no probable cause  
17 to seize documents reflecting or relating to securities  
18 transactions entered into on behalf of clients other than those  
19 five that was put before the magistrate, correct?  
20 A. That's correct.  
21 Q. And there was no probable cause that was put before the  
22 magistrate to seize any documents other than concerning the  
23 five individuals we have mentioned that involved any current or  
24 former Amerindo entities, affiliates, principals, officers, and  
25 employees, correct?

SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

39

67arvilh Fraterrigo - cross  
1 A. That's correct.  
2 Q. In terms of your instructions to the individuals executing  
3 the search warrant, would it be accurate to say that you never  
4 instructed them to limit their seizure of materials from the  
5 Park Avenue office to materials concerning the five individuals  
6 we have been talking about?  
7 A. No, it did not.



16 the government would like to reflect that Mr. Litt left the  
17 courtroom during the portion of Inspector Fraterrigo's  
18 testimony regarding what was told to her regarding the grand  
19 jury subpoena. But he has now returned to the courtroom.

20 THE COURT: OK. I thought maybe he had forgotten his  
21 No. 2 pencil. Go ahead, Mr. Hoffman. How much longer do you  
22 think you have?

23 MR. HOFFMAN: You are the sixth person to ask me that.  
24 I guess I am getting very boring. About 45 minutes I should  
25 think.

SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

48

67arvilh Fraterrigo - cross

1 THE COURT: That's fine. You all should be thinking  
2 about when we are going to continue this, because even I  
3 realize we are not going to finish today.

4 MR. HOFFMAN: I did have one on that realm, one  
5 hopefully time-saving aspect. I asked about brokerage accounts  
6 similar to the ones that we had put in evidence, and I received  
7 an answer. But I was wondering in terms of volume if it would  
8 be a time saver, because I am thinking of the record as well,  
9 rather than going through all of the other ones, if there would  
10 be some way where we could just identify them by letter or  
11 whatever the Court would suggest and make it a part of the  
12 hearing. I just don't want to take the time to continue to go  
13 through those. I just mention that to the Court.

14 THE COURT: That is fine. But even with that, we are  
15 not going to finish today. You all can think about it at lunch  
16 and we will talk about it at the end of the day.

17 Go ahead, Mr. Hoffman.

18 BY MR. HOFFMAN:

19 Q. If you look at page 8, paragraph D as in David of your  
20 sworn affidavit submitted to the magistrate in this matter, you  
21 will see on the bottom of page 8 paragraph D as in David is  
22 part of the things you say you have probable cause for, to wit,  
23 current and former client lists, client files, investment  
24 brochures, marketing materials, etc.

25 I asked you certain questions and you gave me certain

SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

49

67arvilh Fraterrigo - cross

1 answers to that, correct?

2 A. Yes.

3 Q. In the same vein, paragraph E on page 9 calls for client  
4 list, client files, investment brochures, marketing materials,  
5 investment advisory agreements, copies of correspondence sent  
6 to or received from clients and other documents concerning or  
7 reflecting the identities of and communications with clients.

8 Up to that point, that is basically the same  
9 description of materials for which you say you have probable  
10 cause that was in the prior paragraph, right?

11 MS. McEVoy: Objection as to reading half the clause.

12 MR. HOFFMAN: I am going to continue on.

13 Q. I am saying up to that point it is the same description as  
14 you had in the prior paragraph, right?

15 A. That's correct.

16 Q. Then it goes on to say, "concerning or reflecting the  
17 identities of and communications with clients who have

18 investments managed by Amerindo, who receive redemptions  
19 through or make investments through overseas bank accounts and  
20 trust accounts." Do you see that?  
21 A. Yes.  
22 Q. Would it be accurate to say, as it was for the other  
23 paragraph, that other than the five named individuals we talked  
24 about, you submitted no probable cause to the magistrate to  
25 support the seizure of the documents I just described?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

50

67arvilh

Fraterrigo - cross

1 A. That's correct.  
2 Q. Again, there was nothing stopping you from more narrowly  
3 describing these documents, for example, by saying as they  
4 relate to those five individuals, correct?  
5 A. That's correct.  
6 Q. Paragraph H, bottom of page 9, for which you say there is  
7 probable cause to seize documents reflecting any Amerindo  
8 investment in guaranteed fixed-rate deposit accounts, including  
9 lists of clients with investments in GFRDAs, account statements  
10 reflecting investments in GFRDAs, documents reflecting the  
11 holdings of any Amerindo entity in certificates of deposit or  
12 government entities, and documents reflecting all securities  
13 underlying any investment in GFRDA.

14 Would it be accurate to say again that other than the  
15 five individuals mentioned, there was no information put in the  
16 material put before the magistrate for the search warrant that  
17 would support probable cause for this material called for in  
18 paragraph H other than as to those five individuals, correct?

19 A. That's correct.  
20 Q. Again, there was nothing stopping you from limiting or  
21 circumscribing the description on a narrower basis, correct?  
22 A. That's correct.  
23 Q. Paragraph I, documents reflecting any private bank,  
24 brokerage, or other account with any financial institution held  
25 by Amerindo principals, including Alberto Vilar and Gary

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

51

67arvilh

Fraterrigo - cross

1 Tanaka. Isn't it a fact that you had no probable cause to  
2 support the seizure of documents described in that paragraph as  
3 to Amerindo principals other than Alberto Vilar and Gary  
4 Tanaka?

5 MS. McEVOY: Objection.

6 THE COURT: Overruled.

7 A. That's correct.  
8 Q. Going to paragraph J, documents reflecting or relating to  
9 the cancellation of completed trades and rebooking of those  
10 canceled trades in other accounts managed or controlled by  
11 Amerindo.

12 Would it be accurate to say that you had no probable  
13 cause -- withdrawn -- that there was no probable cause  
14 submitted to the magistrate to seize documents referred to in  
15 paragraph J that I just described concerning cancellation of  
16 completed trades and rebooking of those canceled trades in  
17 other accounts managed or controlled by Amerindo as to anyone  
18 other than the five individuals mentioned, correct?

19 A. That's correct.

20 Q. Paragraph L, which calls for documents reflecting brokerage  
21 accounts maintained by Amerindo at any broker-dealer other than  
22 Bear Stearns & Company. Would it be accurate to say that you  
23 had not submitted any probable cause to the magistrate to  
24 support the seizing of such documents concerning anyone other  
25 than the five individuals mentioned?

SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

52

67arvilh Fraterrigo - cross

1 A. That's correct.

2 Q. Paragraph M as in "mother," bank account statements,  
3 brokerage account statement, transaction records, wire transfer  
4 instructions and records, copies of checks sent to or received  
5 from client, notes, ledgers, cash receipt journals, deposit  
6 tickets and records, and other documents reflecting or relating  
7 to movements of funds into or out of the Amerindo brokerage  
8 accounts.

9 Would it be accurate to say that there was no  
10 information included in the material you submitted to the  
11 magistrate that would support probable cause to take or get  
12 documents at the Park Avenue premises concerning any entities  
13 or people other than the five that you have mentioned, is that  
14 correct?

15 A. That's correct.

16 Q. Paragraph N as in "Nancy," page 10, records of expenses  
17 such as copies of checks and/or wires sent to landlords. Would  
18 it be accurate to say that there was no information submitted  
19 to the magistrate that would support probable cause to take  
20 copies of checks and/or wires sent to landlords?

21 A. That's correct.

22 Q. There would be no probable cause submitted to the  
23 magistrate for records of expenses such as copies of checks  
24 and/or wires sent to counsel, correct?

25 A. That's correct.

SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

53

67arvilh Fraterrigo - cross

1 Q. The same, there is no probable cause for that material sent  
2 to accountants, correct? Bottom of the page.

3 A. That's correct.

4 Q. Or to brokers?

5 A. Correct.

6 Q. Or to utility companies?

7 A. That's correct.

8 Q. Or to other organizations and individuals who provide goods  
9 and services to Amerindo?

10 A. That's correct.

11 Q. Or corporation and government documents related to the  
12 various entities with which Amerindo and Vilar conduct business  
13 other than as to the five individuals?

14 A. That's correct.

15 Q. No probable cause put in the material put before the  
16 magistrate for documents representing or reflecting  
17 communication with accountants, correct? No probable cause for  
18 that, correct?

19 A. If it is reflecting communications regarding the  
20 individuals.

21 Q. Other than the five individuals?

24 A. I don't recall.  
25 Q. Did you make any changes on that draft?  
SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

□

67arvilh Fraterriago - cross 56  
1 A. I don't recall. I know there were several changes.  
2 Q. Did there come a time when you saw a third draft, or were  
3 the first two --  
4 A. I did. There were several changes. I don't know how many.  
5 There were several drafts of it.  
6 Q. You don't remember the changes that you made?  
7 A. No.  
8 MR. HOFFMAN: I would ask if the government has copies  
9 of those drafts with the changes.  
10 THE COURT: Do you know?  
11 MS. McEVOY: I don't know.  
12 THE COURT: They will check over the lunch break.  
13 Q. When you got these drafts and made these changes, there was  
14 nothing limiting you or stopping you from making whatever  
15 changes you thought were appropriate, correct?  
16 A. No.  
17 Q. Is that correct?  
18 A. That's correct.  
19 Q. When the search was going on at the premises, you told us  
20 that certain materials involved computers, correct, certain of  
21 the seizures involved computers, correct?  
22 A. That's correct.  
23 Q. Do you know whether or not any of the computers were imaged  
24 on the premises?  
25 A. Some were, yes.

SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

□

67arvilh Fraterriago - cross. 57  
1 Q. Do you know whether or not, when those computers were  
2 imaged, all of the information on the computer was simply taken  
3 from it or whether there was anything not imaged from the  
4 computer?  
5 A. My understanding was there was a mirror image of the hard  
6 drive.  
7 Q. A mirror image?  
8 A. Yes.  
9 Q. By that you mean everything that was on it was taken?  
10 A. Yes.  
11 Q. Would it be accurate to say that when the computers were  
12 mirror-imaged, so to speak, nobody was looking at the --  
13 withdrawn. That is a bad question. As far as you know, when  
14 the computers were mirror-imaged, when you say everything was  
15 taken, there was no looking at the warrant and Exhibit A that  
16 described what can be taken and comparing those categories to  
17 what was on the computer; it was just taken in bulk, correct?  
18 A. My understanding was a mirror image was conducted of the  
19 hard drive and that was it.  
20 Q. Were there other computers that were not mirror-imaged that  
21 were taken off the premises?  
22 A. Yes, that's correct.  
23 Q. Do you know the reason that was done as opposed to mirror  
24 imaging those?  
25 A. I think there were issues with the size of the server.

SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

58

67arvilh Fraterrigo - cross

1 Some of the servers were pretty large, and they couldn't finish  
2 mirror-imaging some of the other computers.

3 Q. So as far as you know, it was a bulk problem, the amount of  
4 information contained?

5 A. Yes.

6 Q. Did there come a time when those computers were mirror-  
7 imaged?

8 A. Yes.

9 Q. Again, when the information was taken off those computers,  
10 it was taken off in bulk as opposed to going through it and  
11 seeing what information was covered by attachment A, correct?

12 A. That's correct.

13 MS. McEVOY: Let the record reflect that Mr. Litt has  
14 reentered the courtroom.

15 THE COURT: So noted.

16 Q. Did you ever go through the computer material that was  
17 taken in bulk, or mirror-imaged as you put it, either at the  
18 site or subsequently as to those computers that were taken off  
19 site, in a similar manner that you went through some of the  
20 boxes to see if any of the information taken was improperly  
21 seized?

22 A. No, I did not.

23 Q. Do you know if anybody has?

24 A. No, I don't know.

25 Q. You are the case agent. You are in charge of this, right?

SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

59

67arvilh Fraterrigo - cross

1 A. Yes.

2 Q. Did you tell anyone to do that?

3 A. No, I didn't.

4 Q. So as far as you know, no one has, correct?

5 A. As far as I know, I don't think anyone has.

6 Q. Thank you. When you submitted materials to the magistrate  
7 to get the search warrant, you were aware, were you not, that  
8 some of the materials that would be part of the package would  
9 be the complaints that you signed and swore to involving Mr.  
10 Vilar and Mr. Tanaka, correct?

11 A. Yes.

12 Q. As to those complaints, did you participate in the drafting  
13 of them?

14 A. Yes.

15 Q. If you will turn to 3501-H, a copy of which, if I may  
16 approach, your Honor --

17 THE COURT: Yes, you may.

18 Q. -- I will put before you.

19 MR. HOFFMAN: Let the record reflect I am returning  
20 3501-J, hopefully in exactly the form I was given it.

21 Q. Look through that and tell me if that is the complaint you  
22 signed and swore to and made a part of the documents put before  
23 the magistrate. That complaint is concerning U.S. v. Alberto  
24 Vilar?

25 A. Yes.

SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

3 A. Correct.

4 Q. About how long before you first worked on this complaint  
5 had you been getting information from the SEC?

6 MS. McEVOY: Objection.

7 THE COURT: Sustained.

8 Q. Would it be accurate to say that nowhere in the complaints  
9 that were made part of the material that went before the  
10 magistrate, complaints against Mr. Vilar and Mr. Tanaka, that  
11 nowhere in those documents did you state that there was any  
12 probable cause to seize any documents from the Park Avenue  
13 premises? Correct?

14 A. These were complaints.

15 Q. I understand what they are. I am simply asking you --

16 A. It doesn't indicated a seized amount. I didn't state that.

17 Q. So all of the information that you put before the  
18 magistrate where you said you had probable cause to seize  
19 material, that information was contained either in your  
20 affidavit or attachment A, correct?

21 A. Probable cause, this part of the probable cause is the  
22 complaints, the two --

23 Q. Let me ask you again. Did you put any statements in the  
24 complaint of either Vilar or Tanaka alleging probable cause to  
25 seize any particular material from the Park Avenue office?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

65

67arvilh

Fraterrigo - cross

1 A. No.

2 Q. So would it be accurate to say that the only probable cause  
3 you specified to seize specific materials from the Park Avenue  
4 office was contained in your affidavit and attachment A?

5 A. That's correct.

6 Q. Do you remember describing on direct examination certain  
7 materials that you personally seized from the premises?

8 A. Which premises?

9 Q. Park Avenue.

10 A. Yes.

11 Q. That is the premises that is the subject of the search  
12 warrant as opposed to London.

13 A. All right.

14 Q. Can you tell us if any of the materials you seized  
15 personally from the premises at Park Avenue concerned  
16 individuals other than the five that we have been mentioning?

17 A. Individuals?

18 THE COURT: Do you mean investors?

19 Q. People.

20 A. Individuals, like just people in general?

21 Q. Yes.

22 A. Yes.

23 Q. Can you tell us whether or not any of the materials you  
24 personally took from the Park Avenue premises related to  
25 entities, corporate entities, other than those that you

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

66

67arvilh

Fraterrigo - cross

1 described in your affidavit as involving any of the five  
2 individuals?

3 MS. McEVOY: Your Honor, objection as ambiguous  
4 regarding "entities."

5 THE COURT: I think that's right. Mr. Hoffman, you  
6 might want to rephrase it.  
7 Q. Did you take any materials when you searched the Park  
8 Avenue premises that concerned any corporations other than  
9 those that you described in your affidavit as involving the  
10 five individuals?  
11 MS. McEVOY: Objection on the same grounds.  
12 THE COURT: Are you talking about institutional  
13 clients?  
14 MR. HOFFMAN: No.  
15 THE COURT: I think you may need to tell her a little  
16 bit more.  
17 Q. Excluding institutional clients, did you take any materials  
18 from the Park Avenue office, you personally, that involved  
19 business corporations that were other than those described in  
20 your affidavit concerning the five individuals?  
21 A. I don't understand. It is not very clear what you are  
22 asking.  
23 Q. Do you have a copy of 3501-L?  
24 A. No.  
25 Q. Government Exhibit 54, also identified as 3501-L, is that  
SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

67

67arvilh Fraterrigo - cross  
1 your inventory?  
2 A. Yes, it is.  
3 Q. Would you look at page 2 of 2. The bottom right-hand  
4 corner says 2 of 2. Do you see that?  
5 A. Yes.  
6 Q. On that page it says S-A-E-E-P, correct?  
7 A. Yes.  
8 Q. M-A-S-O-U-D letter re Citibank, private bank, and Amerindo  
9 Investment Advisors, Inc., correct?  
10 A. Yes.  
11 Q. Did that letter, that document, concern Cates, Lily Cates?  
12 A. No, it did not.  
13 Q. Did it concern any of the other aforementioned individuals  
14 that we have been talking about as the five individuals?  
15 A. No, it did not.  
16 Q. Do you remember what it referenced?  
17 A. No, I don't recall.  
18 Q. Do you remember testifying earlier today, and Friday for  
19 that matter, that you submitted no probable cause, submitted no  
20 probable cause, to the magistrate for any material concerning  
21 anything other than the five individuals?  
22 A. That's correct.  
23 Q. Would this document fall within the category of there being  
24 no probable cause submitted to the magistrate for this  
25 document, since it doesn't apply to any of the five  
SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

68

67arvilh Fraterrigo - cross  
1 individuals?  
2 A. That's correct.  
3 Q. Would you go to the next page, which says page 1 of 2. By  
4 the way, just a curiosity question that drove me crazy. Was  
5 there another Fraterrigo that was involved in the search?  
6 A. Yes.



7 Q. Page 1 of 2. I am now referring to the search warrant  
8 inventory that you filled out.  
9 A. Yes.  
10 Q. It says, "Quantity 1 Goldman Sachs letter Richard Menschel  
11 5/1/2000." Do you see that?  
12 A. Yes.  
13 Q. Did that have anything to do with the five individuals we  
14 mentioned?  
15 A. No.  
16 Q. Would that fall into the category of documents for which  
17 you supplied no probable cause to the magistrate?  
18 A. That's correct.  
19 Q. Look at the next document, which says, "Richard Menschel  
20 letter." Would that also have no reference to the five  
21 individuals?  
22 A. That's correct.  
23 Q. That also would fall into the category of documents for  
24 which you gave the magistrate no probable cause for you to  
25 seize, correct?

SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

□

69

67arvilh Fraterrigo - cross  
1 A. That's correct.  
2 Q. Would you look down, the fifth one down. What is the next  
3 word? Osman? The next word.  
4 A. Goldman.  
5 Q. I'm sorry. "Letter Goldman Sachs group 12/4/02."  
6 A. Yes.  
7 Q. Would that also not have applied to any of the five  
8 individuals and also have fallen into the category of documents  
9 which you supplied to the magistrate for probable cause?  
10 A. I can't recall.  
11 Q. Let's look down farther, where it says, "notes typed  
12 J-O-A-Q-U-I-N re original and new deal." Do you see that?  
13 A. Yes.  
14 Q. Would that also not have pertained to any of the five  
15 individuals?  
16 A. Without looking it over again, I can't recall. I don't  
17 know.  
18 Q. Do you have these documents that are reflected in your  
19 search warrant inventory in a specific place?  
20 A. Yes.  
21 Q. Are they readily accessible?  
22 A. They would be in the evidence room in my office n my  
23 building.  
24 Q. Would you be able to bring them over today?  
25 A. I will have to get someone to get them.

SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

□

70

67arvilh Fraterrigo - cross  
1 MR. HOFFMAN: I would ask the Court for those  
2 documents she has no memory of to allow us after lunch to  
3 continue when she brings the documents so she can refresh her  
4 recollection.  
5 THE COURT: How many documents are we talking about?  
6 MR. HOFFMAN: I don't know. Not that many. But we  
7 are going to go through the documents to see which she  
8 remembers and which she doesn't.



9 THE COURT: Any objection?  
10 MS. McEVOY: Your Honor, we can do our best to get  
11 them over here.  
12 THE COURT: That is assumed. Do your best and we will  
13 see what happens.  
14 Q. Next, one clear yellow folder "John Sweetland." Would it  
15 be accurate to say that that had nothing to do with the five  
16 individuals.  
17 A. That's correct.  
18 Q. Would it be accurate to say that that would also fall into  
19 the category of documents that you gave the magistrate no  
20 probable cause for you to seize?  
21 A. That's correct.  
22 Q. Next is Diane Cooper for Wilmington Trust. Would it be  
23 accurate to say that that has no bearing on any of the five  
24 individuals we mentioned?  
25 A. No, that is incorrect.

SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

71

67arvilh Fraterriago - cross  
1 Q. To which of the five individuals does that have a bearing  
2 on?  
3 A. That was involving Alberto Vilar. I think it was a letter  
4 about his account, his account, wire transfers, related to  
5 that.  
6 Q. But not to the five individuals we have been mentioning:  
7 Marcus, Cates --  
8 A. I don't think it was relating to them specifically, no.  
9 Q. Would it be accurate to say that you did not give the  
10 magistrate any information to support probable cause to seize  
11 that document?  
12 A. That's correct.  
13 Q. The next one is one clear folder containing letters, notes,  
14 emails from various individuals requesting money. Would it be  
15 accurate to say that those documents did not reference any of  
16 the five individuals we have been talking about?  
17 A. I can't be sure without looking at it.  
18 Q. Each of the ones you say you can't be sure, I would  
19 appreciate that we get those here if we can.  
20 The next page where it says, "Amerindo Internet fund  
21 file," correct?  
22 A. Correct.  
23 Q. Would it be accurate to say that that does not involve any  
24 of the five individuals we have been talking about?  
25 A. That's correct.

SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

72

67arvilh Fraterriago - cross  
1 Q. Would it be accurate to say that that, too, falls into the  
2 category of documents for which you did not give the magistrate  
3 any probable cause to seize?  
4 A. That's correct.  
5 Q. The next one, one down, "Amerindo Internet fund  
6 presentation file," do you see that?  
7 A. Correct.  
8 Q. Do you have a memory of that?  
9 A. Yes.  
10 Q. Would it be accurate to say that that did not affect any of

11 the five individuals you mentioned?  
12 A. No, it does not.  
13 Q. Would it be accurate to say that that would fall in the  
14 category of documents for which you did not give the magistrate  
15 probable cause to seize?  
16 A. That's correct.  
17 Q. Next, Amerindo Internet Technology Partners LLP. Would it  
18 be accurate to say that that did not affect any of the five  
19 individuals?  
20 A. No, it does not.  
21 Q. Would it be accurate to say that that falls in the category  
22 of documents for which you did not give the magistrate any  
23 material to support probable cause for its seizure? Is that  
24 correct?  
25 A. That's correct.

SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

□

67arvilh

Fraterrigo - cross

73

1 Q. Below, skipping one, we get to contacts file, correct?  
2 A. Yes.  
3 Q. Do you have a memory of what is contained in there?  
4 A. Not specifically.  
5 Q. I would ask that you bring that.  
6 The next one, compliance reports, private placement  
7 updates, do you see that?  
8 A. Yes.  
9 Q. Would it be accurate to say that that did not involve any  
10 of the five individuals you have named?  
11 A. Correct.  
12 Q. Would it be accurate to say that that is a document for  
13 which you did not put information to support probable cause  
14 before the magistrate for its seizure? Is that correct?  
15 A. That's correct.  
16 Q. Citibank fund file containing files miscellaneous Citibank  
17 funds, performance fund. Would it be accurate to say that that  
18 material had nothing to do with the five individuals that have  
19 been named? Correct?  
20 A. That's correct.  
21 Q. Would it be accurate to say that that material falls within  
22 the category of those documents for which you did not put  
23 information before the magistrate that would support probable  
24 cause for the seizure, correct?  
25 A. That's correct.

SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

□

67arvilh

Fraterrigo - cross

74

1 Q. Portfolio review committee file. Would the answer to the  
2 prior questions be the same for that file?  
3 A. I don't know.  
4 Q. That is one you don't recognize? You don't remember?  
5 A. I don't remember.  
6 Q. I would ask you to bring that, if possible.  
7 If you would go to search warrant inventory, in the  
8 upper right-hand corner it says N as in "Nancy" 10. It is a  
9 few pages down but it is not marked by a page number. That is  
10 the closest mark I can give you. It is in the upper right-hand  
11 corner.  
12 A. Yes.

13 Q. That says, "quantity 14 black/red record, one ledger  
14 notebook." Do you see that?  
15 A. Yes.  
16 Q. Do you remember whether or not there was information  
17 contained in that I guess it is a notebook concerning any of  
18 the five individuals mentioned?  
19 A. I went through a sampling of these notebooks at the time,  
20 and they mentioned some of the individuals.  
21 Q. When you say you went through a sample, were there 14 of  
22 these books?  
23 A. There was 14.  
24 Q. How many did you go through?  
25 A. I think I probably went through 3 or 4.

SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

75

67arvilh

Fraterrigo - cross

1 Q. Would it be accurate to say as to the others that you  
2 seized, you have no idea of whether or not there was any  
3 mention in them as to the five individuals?  
4 A. No. I didn't get a chance to look at it on-site.  
5 Q. Have you looked at it since?  
6 A. I believe I have. Not in its entirety. Probably more than  
7 four.  
8 Q. But you don't know how many more?  
9 A. No.  
10 Q. Could you bring those.  
11 "8 1/2-by-11 yellow pads AV notes." I assume that is  
12 Alberto Vilar notes.  
13 A. Yes.  
14 Q. Is there anything in those documents referring to the five  
15 individuals?  
16 A. Yes.  
17 Q. That is why you took them, correct?  
18 A. Yes.  
19 Q. If you would go to the next page, "have 9 black/red  
20 record/ledger notebook," correct?  
21 A. Yes.  
22 Q. Does that mean there are nine of those?  
23 A. Yes.  
24 Q. Did you go through each of those?  
25 A. No. I went through a sample of them.

SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

76

67arvilh

Fraterrigo - cross

1 Q. Subsequent to seizing them, have you gone through them?  
2 A. I believe I went through not all of them. Some of them.  
3 Q. So there may be those that you haven't gone through?  
4 A. Correct.  
5 Q. Of those that you have gone through, did you find in any of  
6 them that they did not refer to any of the five individuals?  
7 A. They did not refer?  
8 Q. Yes.  
9 A. I can't say for sure.  
10 Q. So you will bring those, please.  
11 A. Yes.  
12 Q. "One black folder pad." Do you have any memory of what  
13 that is?  
14 A. No.

15 Q. Could you bring that, please. "Two address notebooks."  
16 Did you go through those?  
17 A. Yes.  
18 Q. Did those have references to the five individuals?  
19 A. I can't recall.  
20 Q. Would you bring those, please. "One Amerindo Technology  
21 Fund registration" -- can you tell me what the next word is?  
22 A. "Securities." I can't see the rest.  
23 Q. "July 1996," correct?  
24 A. Yes.  
25 Q. Would it be accurate to say that that had no bearing on the  
SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

77

67arvilh Fraterriago - cross  
1 five individuals you have mentioned?  
2 A. I can't say for sure. I would have to look at it.  
3 Q. Would you bring that, please. Next page, position box O,  
4 you say, "room O fax report." Do you see that?  
5 A. Yes.  
6 Q. Did you go to the fax machine and just empty out whatever  
7 information was on it?  
8 A. I printed it out.  
9 Q. Make copies of it, is what I am saying.  
10 A. Printed out the memory.  
11 Q. The memory?  
12 A. Yes.  
13 Q. In doing so, did you look to see if there were any  
14 materials contained therein that had anything to do with any of  
15 the five individuals?  
16 A. It was a list of telephone numbers.  
17 Q. You don't know whose numbers they were?  
18 A. No.  
19 Q. So at the time you had no basis to believe that they had  
20 anything to do with the five individuals, correct?  
21 A. No, I don't know, I can't say for sure.  
22 Q. Under that you say, "Xerox fax center" something. I don't  
23 know what those letters mean. Can you tell us what that is.  
24 A. I think that is a description of the fax machine.  
25 Q. The next page says, "Room T" as in "Tom," "fax report work  
SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

78

67arvilh Fraterriago - cross  
1 center progress 35." Can you tell us what that was.  
2 A. That is a fax machine, same thing. I printed out its  
3 memory.  
4 Q. Your answers would be the same?  
5 A. Yes.  
6 Q. If you would go to the next page. That is "R. Fraterriago,"  
7 correct, as are all the documents?  
8 A. I don't know.  
9 Q. You don't have the next page. OK. Thank you.  
10 MR. HOFFMAN: For the record, I am returning  
11 Government Exhibit 54.  
12 Q. Were you aware at the time that you submitted the affidavit  
13 to the magistrate that the premises at Park Avenue contained  
14 materials concerning institutional clients of Amerindo?  
15 MS. McEVOY: Objection.  
16 THE COURT: Overruled.

17 A. Yes.  
18 Q. Were you aware at the time that you participated in the  
19 execution of the search warrant that the premises contained  
20 material concerning institutional clients?  
21 A. Yes.  
22 Q. Did you at any point in time ever tell any of the executing  
23 postal inspectors not to take those documents?  
24 A. No, I did not. I don't recall.  
25 Q. Best memory is you did not?

SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

79

67arvilh Fraterrigo - cross

1 A. I don't believe I did.  
2 Q. At the time that you were involved in the drafting, as you  
3 described earlier, of the materials to be supplied to the  
4 magistrate, did you ever discuss as concerns what should be in  
5 that document with Mr. Litt -- he doesn't have to leave -- the  
6 fact that there were institutional clients' materials at the  
7 Park Avenue address?  
8 MS. McEVOY: Objection.  
9 THE COURT: Sustained.  
10 MR. KOBRE: Your Honor, on that question may we  
11 approach for a second to address that last objection?  
12 THE COURT: Sure.  
13 (At the sidebar)  
14 MR. KOBRE: I figured this was an appropriate time on  
15 the issue he raised so we don't have to come back to it. The  
16 defense has argued in its brief that one reason the inspectors  
17 acted that they didn't convey was that the warrants were  
18 approved by the Assistant United States Attorney, obviously  
19 from the information that was provided.

20 To the extent that Mr. Hoffman is looking to get into  
21 inquiry as to the discussion with the United States Attorney  
22 and the approval of it and the discussion of facts relating to  
23 the affidavit, it is relevant. They are pressing the argument,  
24 making that point, as to the fact that that is one reason why  
25 you should find that the government acted in good faith in this  
SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

80

67arvilh Fraterrigo - cross

1 instance.  
2 But I don't think they can have it both ways. They  
3 can't press that argument and then try to preclude the  
4 discussion between the AUSA and the inspectors who executed the  
5 warrant.

6 THE COURT: My take on it was it was getting to  
7 whether or not there was some sort of a material omission that  
8 led to the warrant being almost fraudulently approved, and  
9 presumably that would include Mr. Litt as well. I don't see  
10 that there is a basis for any belief that there has been any  
11 misrepresentation to the magistrate. And I don't think  
12 anything the government has said about what Mr. Litt reviewed  
13 goes to that question.

14 MR. KOBRE: Let's say, arguing Mr. Hoffman's point,  
15 facts are being withheld from Mr. Litt and he wants to explore  
16 that fact, the fact that the government is saying a factor to  
17 be considered is the fact that the inspector should have been  
18 bolstered by the fact that the AUSA drafted it and approved it.

2 A. Yes.  
3 Q. Excluding the five individuals, I asked you if in fact you  
4 had no materials put before the magistrate that would give the  
5 magistrate probable cause to have you seize these various  
6 categories, and question after question you answered by saying  
7 that's correct, exclusive of the five individuals there was no  
8 material put before the magistrate to support probable cause to  
9 seize those documents. Do you remember those questions and  
10 answers?  
11 A. Yes.  
12 Q. What I am asking you is that information which you just  
13 gave us as to those categories where there was no information  
14 put before the magistrate to support probable cause to seize  
15 those documents, you had the same awareness at the time you put  
16 the information before the magistrate, you knew at that time,  
17 just as you have testified here under oath, that you were not  
18 putting in the documents before the magistrate material to  
19 support probable cause to seize those documents, correct?  
20 MS. McEVOY: Objection.  
21 THE COURT: Inspector, do you remember giving  
22 testimony about client lists?  
23 THE WITNESS: Yes.  
24 THE COURT: And that there was probable cause. You  
25 said that there was not probable cause to get all the client  
SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

94

67arvilh Fraterrigo - cross  
1 lists, there were only some client lists that you had specific  
2 information. Do you recall that?  
3 THE WITNESS: Yes.  
4 THE COURT: The question is, is it a fact that you  
5 knew you didn't have probable cause to get every client list at  
6 the time you went and got the warrant?  
7 MR. HOFFMAN: Correct.  
8 THE WITNESS: That's correct.  
9 Q. That's correct?  
10 A. Mm-hm.  
11 Q. It would be the same for all the other things that we asked  
12 you, the other categories, not just client lists, but we went  
13 through many categories, correct?  
14 A. That's correct.  
15 THE COURT: Breaking point here?  
16 MR. HOFFMAN: Yes, sir.  
17 THE COURT: Let's break for lunch. Come back at 2:15.  
18 Everybody should give some thought to all your calendars. I am  
19 not going to eliminate summer vacations, but we do need to take  
20 some more time to finish this one.  
21 You are still on cross.  
22 (Luncheon recess)  
23 AFTERNOON SESSION  
24 2:15 p.m.  
25 CYNTHIA FRATERRIGO, resumed.

SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

95

67arvilh Fraterrigo - cross  
1 CROSS-EXAMINATION (continued)  
2 BY MR. HOFFMAN:

11 Q. Other than what you seized from Mr. Vilar's office.  
12 A. Yes, that's it.  
13 Q. About how long did it take you to run off those memories  
14 from those two Xerox machines?  
15 A. Probably 10 to 15 minutes.  
16 Q. So the 45 minutes in Mr. Vilar's office and let's say the  
17 30 minutes between the two machines that you were involved in  
18 in running off copies of the memory, that is approximately an  
19 hour and 15 minutes to an hour and a half, correct, 30 and 45  
20 minutes?  
21 A. Correct.  
22 Q. You were in the offices from approximately 12:00 to  
23 approximately 8:30 at night, correct?  
24 A. That's correct.  
25 Q. It is your testimony that you did not have enough time to  
SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

104

67arvilh Fraterrigo - cross  
1 look at these additional books in Mr. Vilar's office, correct?  
2 A. That's correct.  
3 Q. It is your testimony that since in a couple of them you saw  
4 references to the five individuals, you then seized all 23  
5 books, 14 and 9, correct?  
6 A. That's correct.  
7 Q. Thank you. At the time that you were doing the search, you  
8 were aware, were you not, that Amerindo, amongst its various  
9 business aspects, had American mutual funds that it owned,  
10 correct?  
11 MS. McEVOY: Objection: Asked and answered.  
12 THE COURT: That's all right.  
13 A. Yes.  
14 Q. You were also aware that none of the five individuals that  
15 we have been referring to, as far as you know, had no  
16 information that any of the five individuals were investors in  
17 any of those mutual funds, correct?  
18 MS. McEVOY: Objection.  
19 THE COURT: Overruled.  
20 A. That's correct.  
21 Q. Let me show you defense OO, a book which I will represent  
22 to you was taken from the box marked N as in "Nancy" 10 that  
23 relates to the same sheet of the search warrant we are looking  
24 at. Have you seen that before?  
25 A. Yes.

SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

105

67arvilh Fraterrigo - cross  
1 Q. Did you mark that down on the page of the search warrant  
2 inventory that you filled out for N10?  
3 A. Yes.  
4 Q. What did you call it on that page?  
5 A. Amerindo Technology Fund registration under the Securities  
6 Act, I guess, and then I put July 19, '96.  
7 Q. Did you look at that book and see that it was a compilation  
8 of documents concerning the registered mutual funds that  
9 Amerindo was involved with?  
10 A. Yes.  
11 Q. It is accurate, is it not, to state, as you did a moment  
12 ago, that there was no reference to any of the five individuals



13 that we are discussing, because, amongst other things, they  
14 were not investors in the American mutual funds, correct?  
15 A. I don't understand.  
16 Q. You told us a moment ago that the five individuals that you  
17 referred to that you had no information that they were  
18 investors in the American mutual funds, is that right?  
19 A. That's correct.  
20 Q. This book, as you said also a moment ago, is a compilation  
21 of documents referring to those mutual funds, correct?  
22 A. Correct.  
23 Q. So it would be accurate to say, would it not, that you put  
24 no information before the magistrate when you asked for the  
25 search warrant that would support any probable cause to seize  
SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

106

67arvilh Fraterrigo - cross  
1 documents concerning all of the Amerindo registered American  
2 mutual funds, correct?  
3 A. That's correct.  
4 Q. But you seized this anyway, correct?  
5 A. It was covered in the warrant. Yes, I seized it.  
6 Q. When you say it was covered under the warrant, what you are  
7 saying is as far as you were concerned, the words in attachment  
8 A could be interpreted as to include this Exhibit OO, Defense  
9 Exhibit OO, correct?  
10 A. What I said was that that would be covered under attachment  
11 A.  
12 Q. Staying on N as in "Nancy" 10, warrant inventory, you  
13 indicate a Mead composition book, is that correct?  
14 A. Yes.  
15 Q. Let me show you Defendants' Exhibit PP as in "Peter." Can  
16 you tell me if you went through the black PP as in "Peter" at  
17 the time that you seized it?  
18 A. I can't recall for sure.  
19 Q. Inspector, we will get to looking at it. Can you tell me  
20 whether or not you made any notes that would indicate whether  
21 or not you read through that Exhibit PP as in "Peter."  
22 A. No, I didn't do any notes.  
23 Q. So as you sit here today, you have no knowledge as to  
24 whether or not there was anything contained in defense PP that  
25 would relate in any way, shape, or form to the five individuals  
SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

107

67arvilh Fraterrigo - cross  
1 that we are talking about, correct?  
2 A. I can't recall either way if I looked at it.  
3 Q. Did you look through Defense Exhibit PP in determining what  
4 materials to send back to Amerindo when you looked through  
5 various boxes and in fact ultimately did send back materials?  
6 A. Yes.  
7 Q. When you looked through PP to determine whether or not to  
8 send it back, did you find anything in PP that related to any  
9 of the five individuals?  
10 A. I can't recall.  
11 Q. Would you look at N as in "Nancy" 6, page N as in "Nancy"  
12 6. Do you see on that page you write "one card in envelope  
13 Mayer"?  
14 A. Yes.



15 Q. Can you tell me what you remember that to be.  
16 A. I remember it being a card or from Lisa Mayer to Alberto  
17 Vilar.  
18 Q. In N10 do you reference any document that is a letter to  
19 Mr. Vilar attention Diane Cooper?  
20 A. No, I do not.  
21 Q. Let me show you what was taken from box N10, one of the  
22 three boxes you brought today, and ask you to look at this.  
23 I'm sorry. Defense QQ.  
24 THE COURT: What is this known by, the name, Mr.  
25 Hoffman, that is in the letter?

SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

108

67arvilh Fraterrigo - cross

1 MR. HOFFMAN: I'm sorry?  
2 THE COURT: The spelling of the name in double Q.  
3 MR. HOFFMAN: Diane Cooper, C-O-O-P-E-R.  
4 Q. Let me show you the envelope first before you take out the  
5 contents. Then let me ask you if you remember seizing that  
6 document.  
7 A. No, I don't recall.  
8 Q. Do you remember how it got into box N10?  
9 A. I am assuming that it may have been within the binders, the  
10 notebooks.  
11 Q. But you don't know?  
12 A. No, I don't know for sure.  
13 Q. And you didn't put it on your search warrant inventory?  
14 A. No.  
15 Q. Would you now look at the contents of that envelope and  
16 read it to yourself. Tell me if it relates to any of the five  
17 people.  
18 A. No, it does not.  
19 Q. Does that also fall within the category of documents that  
20 you asked to be seized, that you asked the magistrate to allow  
21 you to seize but that you did not submit information to the  
22 magistrate that would support probable cause to seize that?  
23 A. That's correct.  
24 Q. When you seized books and records and binders and things of  
25 that nature, you said a moment ago that you thought this might

SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

109

67arvilh Fraterrigo - cross

1 have been in one of them, you didn't know but it might have  
2 been, correct?  
3 A. Yes. The reason why I said that, if it was not listed on  
4 the inventory sheet, therefore it wasn't a separate item. If  
5 it was in a binder, then I kept it in the binder.  
6 Q. So during the time that you spent gathering materials from  
7 Mr. Vilar's office, that 45 minutes, you didn't bother to go  
8 through the materials to see if there were things in them such  
9 as this, is that correct?  
10 A. I went through, like I said, the sample book, and then the  
11 others, I didn't go through the others.  
12 Q. The others just seized in bulk, correct?  
13 A. That's correct.  
14 Q. Whatever was there was there, correct?  
15 A. Whatever was in the binder was there in the binder.  
16 Q. Did you also supply to us today pursuant to my request this

17 morning certain materials from N as in "Nancy" 4 and from N as  
18 in "Nancy" 6?  
19 A. Yes.  
20 Q. If you will turn to N as in "Nancy" 4, I am going to show  
21 you Defendants' Exhibit RR. Showing you RR, can you tell me  
22 what marking on your search warrant inventory that corresponds  
23 with.  
24 A. This is one, the first page, refers to the notes typed  
25 "Joaquin regarding new and original new deal." Also, "trade  
SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

110

67arvilh Fraterrigo - cross  
1 recap" is on here. "John Sweetland" and the other materials is  
2 on here, listed on my inventory sheet.  
3 Q. Would you look at that and go through it and tell me if it  
4 refers to any of the five individuals.  
5 A. No, it does not refer to the five individuals.  
6 Q. Would you agree that as to Exhibit RR, Defense Exhibit RR,  
7 you put no information before the magistrate that would support  
8 a finding of probable cause to seize the warrant?  
9 A. Excuse me? That doesn't make sense.  
10 Q. I asked you the same question I have been asking you. Did  
11 you say in information that you put before the magistrate that  
12 you would seek probable cause to seize that warrant?  
13 A. That's correct. A warrant? The documents?  
14 Q. I'm sorry. To seize RR.  
15 A. OK.  
16 Q. Is that correct?  
17 A. Yes, that's correct.  
18 Q. Showing you a document marked Defendants' Exhibit SS --  
19 THE COURT: Can I ask a question, Mr. Hoffman?  
20 MR. HOFFMAN: Yes.  
21 THE COURT: The point I think has been made. I don't  
22 know if there is value to continuing as we go into the triple  
23 lettering of the alphabet. I am not trying to cut you off. If  
24 there is a point beyond the documents you have made, go ahead.  
25 But if it is the same point --  
SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

111

67arvilh Fraterrigo - cross  
1 MR. HOFFMAN: Same point.  
2 THE COURT: All right.  
3 MR. HOFFMAN: Just for the record's sake --  
4 THE COURT: Put on the record what else you want to  
5 talk about.  
6 MR. HOFFMAN: There is another box, N as in "Nancy" 6,  
7 that I would be going through that was produced this afternoon  
8 by Inspector Fraterrigo that we would go through a number of  
9 documents to the same effect.  
10 THE COURT: All right. Again, I am not trying to cut  
11 you off. I just think it is the same point.  
12 MR. HOFFMAN: As long as the point is made.  
13 THE COURT: I don't think the point gets diluted or  
14 strengthened by more documents.  
15 MR. HOFFMAN: Thank you.  
16 Q. While I am looking for a specific reference, perhaps I can  
17 ask you the question. You may remember. On your direct  
18 examination do you remember stating in substance that there

19 were certain documents that you left behind that were covered  
20 by the warrant but that you felt were not relevant and so you  
21 left them behind?  
22 A. I felt that they were not useful to my investigation,  
23 that's correct.  
24 Q. When you say they were not useful to your investigation, I  
25 take it what you meant by that was that they would not help  
SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

112

67arvilh Fraterrigo - cross  
1 show any kind of violation of law that you were trying to  
2 prove, correct?  
3 A. That's correct.  
4 Q. You made that determination when you saw these documents on  
5 the day of the search, correct?  
6 A. That's correct.  
7 Q. That was literally the morning after you submitted or the  
8 day after you submitted the material you submitted to the  
9 magistrate to get the search warrant, correct?  
10 A. That's correct.  
11 Q. So you submitted documents asking the magistrate to allow  
12 you to seize certain materials which the following day you  
13 determined would not be helpful in proving the crimes that you  
14 were looking to prove, correct?  
15 A. That's correct.  
16 Q. You understood at that time, both at the time you made the  
17 submission to the magistrate and the next day when you were  
18 looking through documents as part of the search, that the only  
19 materials you had a right to ask to be seized, asked the  
20 magistrate to allow you to seize, were materials that would  
21 support a showing of illegal activity, correct? You understood  
22 that, correct?  
23 A. No, I don't understand that question.  
24 Q. Let me ask the question again. You understood at the time  
25 that you went to get a search warrant and submitted materials  
SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

113

67arvilh Fraterrigo - cross  
1 to the magistrate to get the search warrant, that what you were  
2 asking for was to seize materials that would help you show that  
3 crimes were submitted, correct?  
4 A. That evidence or, yes, materials that would indicate a  
5 crime has been committed, correct.  
6 Q. Do you remember testifying on direct examination that you  
7 left behind documents that concerned potential investments,  
8 company profiles, folders concerning net asset value of  
9 investments? Do you remember testifying to that?  
10 A. Yes.  
11 Q. And that you did so because, although they were covered by  
12 attachment, they were not relevant to the search, correct?  
13 Your term.  
14 A. They were covered under the search.  
15 Q. But not relevant is what you said, not relevant to the  
16 search. I assumed by that you meant not relevant to proving  
17 the crimes you were looking to prove, correct?  
18 A. Correct.  
19 Q. Isn't it a fact that there were documents seized by others  
20 that concerned potential investments -- you have seen those,

21 correct?  
22 A. Correct.  
23 Q. -- that were descriptive of company profiles? You have  
24 seen those, correct?  
25 A. Correct.

SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

114

67arvilh Fraterrigo - cross  
1 Q. That concerned net asset values of certain investments, you  
2 have seen those, correct?  
3 A. Correct.  
4 Q. And they were very much, the ones that were seized, similar  
5 in nature to the ones that you decided not to seize, correct?  
6 A. That's correct.  
7 Q. In fact, the ones that were seized also, just as the ones  
8 you decided not to seize, would be of no assistance in proving  
9 the crimes you were trying to prove, correct?  
10 A. I can't answer that for sure. I have to look over those  
11 documents again.  
12 Q. You have already looked over them, correct?  
13 A. Yes. But I can't conclude a statement on all of those  
14 documents.  
15 Q. Would it be accurate to say that at least a portion of the  
16 documents that you looked over of the ones I just described  
17 would be of no assistance in proving the crimes that you were  
18 trying to prove, correct?  
19 A. Without reviewing it, I can't make a conclusion right now.  
20 Q. So as not to take the time here, would you agree at an  
21 appropriate time, at a break or whenever, I guess a break, to  
22 look at those documents so that you can answer that question?  
23 MS. McEVOY: Your Honor, objection. What documents?  
24 THE COURT: Every other document seized by every other  
25 inspector. You are trying to get what she left behind with  
SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

115

67arvilh Fraterrigo - cross  
1 other things seized.  
2 MR. HOFFMAN: Correct.  
3 THE COURT: Do you want her to go through the  
4 inventory of however many boxes?  
5 Q. If I may, you stated that there were, the same categories  
6 that you left behind, documents that you have gone through,  
7 that you have seen?  
8 A. Yes.  
9 Q. Just those ones that you have gone through and seen, I am  
10 asking you to refresh your recollection by looking at them so  
11 that you can answer that question.  
12 MS. McEVOY: Objection, your Honor.  
13 THE COURT: You are asking her at break to go through  
14 all the boxes and find something that is similar to what she  
15 left behind or that somebody else seized?  
16 MR. HOFFMAN: Correct.  
17 THE COURT: She has already said she did. Do you want  
18 an example?  
19 MR. HOFFMAN: No. Here is my problem, your Honor. As  
20 to the ones she left behind, the testimony was that they were  
21 left behind that although they were covered by words in  
22 attachment A --

23 THE COURT: They weren't relevant.  
24 MR. HOFFMAN: Right. I am asking her, the inspector,  
25 if she has other materials.

SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

116

67arvilh Fraterrigo - cross

1 THE COURT: She said yes.  
2 MR. HOFFMAN: She said yes. My next question was,  
3 would those equally in her opinion, her view, be of no value to  
4 support the charges that you are trying to prove. Her answer  
5 as to those was, without looking at them again, I can't answer  
6 that.

7 MS. McEVOY: A couple of things, your Honor. First of  
8 all, I don't believe her testimony was that she found those  
9 documents to be of no assistance to her investigation. I  
10 believe her testimony was that they were not relevant, or she  
11 made a decision not to seize them on that ground.

12 I don't see what the relevance would be of the  
13 inspector going through over a hundred boxes of documents other  
14 inspectors seized to make a determination of why they seized it  
15 or whether or not it was covered under the search warrant and  
16 relevant to her investigation.

17 MR. HOFFMAN: I am not asking her to go through a  
18 hundred boxes. I am simply asking her to look at the ones she  
19 has already looked at which she has described.

20 THE COURT: Which is how many boxes?

21 THE WITNESS: 168.

22 THE COURT: How many?

23 THE WITNESS: Approximately 168.

24 THE COURT: I don't want to cut you off, but we need  
25 to be practical about this. Mr. Colton is worried about his

SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

117

67arvilh Fraterrigo - cross

1 client's speedy trial rights. You want to go through 168 boxes  
2 not her, Inspector Fraterrigo. If at a break, Mr. Hoffman, you  
3 think there is a document that fits that description and you  
4 want to take a shot at it, I will certainly let you do that.

5 BY GOVT. COUNSEL:

6 Q. At another point in time in your direct examination you  
7 stated that you left behind business-related paper, again  
8 company profiles, again potential investments, and again net  
9 value charts. Can you explain to us what standard you used in  
10 determining leaving those behind.

11 A. I recall going through several documents, folders,  
12 reviewing it, making a determination whether it was covered  
13 under the warrant. And in some instances if it was covered  
14 under the warrant and if it was relevant or useful to the  
15 investigation, I seized it. In other instances, if it provided  
16 no substantive information, I left it.

17 Q. Did you instruct other inspectors with that standard? Did  
18 you say to them, if you come across documents -- and when I say  
19 did you say to them, in substance. Obviously, I don't mean the  
20 exact words, used, if any. But in substance, did you say to  
21 them, if you come across documents that technically fit within  
22 the words of attachment A, that were covered by attachment A,  
23 but that are not relevant to this case and this investigation,  
24 don't take those?

25 A. No, I did not. I am the case agent. I am closely familiar  
SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

118

67arvilh Fraterrigo - cross  
1 with the investigation. I did not --  
2 Q. So you did not tell them?  
3 A. -- tell any other inspector to do that.  
4 Q. So even though you used that standard -- because you  
5 thought that was appropriate, correct?  
6 A. Yes. I felt I was capable to make that decision.  
7 Q. You did not educate the other people executing the search  
8 warrant so that they could use the same standard, you did not  
9 do that, correct?  
10 A. No, I did not.  
11 Q. I am going to show you an Exhibit T as in "Tom," defense  
12 Exhibit double T as in "Tom," which is government-seized  
13 property evidence tag labeled A01144298.  
14 THE COURT: Which, for the record, is a box.  
15 MR. HOFFMAN: It is a box.  
16 THE COURT: Presumably of documents, right?  
17 MR. HOFFMAN: Yes.  
18 Q. Showing you the box Defense Exhibit TT as in "Tom," would  
19 you quickly take a look inside.  
20 A. Yes.  
21 Q. And tell me if there are not a number of files in there  
22 that are just empty.  
23 A. That's correct.  
24 Q. Do you know if that box of empty files was taken that way  
25 or if there was material in it that was taken out?

SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

119

67arvilh Fraterrigo - cross  
1 A. I can't say for sure, but there might have been materials  
2 inside that was taken out based on privilege.  
3 Q. How would we know that if that were the case?  
4 A. I would have to review the privilege boxes and identify  
5 those items that belong in here.  
6 Q. Thank you. Ordinarily, when materials are taken out  
7 because they are privileged from some file or folder, is there  
8 not some sort of note that is put in saying that that occurred?  
9 A. Some inspectors had a system of doing that. Others took  
10 the item out and on the privileged item indicated where it  
11 belonged back in the original box.  
12 Q. Do you remember approximately what time the actual search  
13 ended? Let me make that clear. Let me withdraw it and make it  
14 clear. The actual active searching at the premises on Park  
15 Avenue ended.  
16 A. I believe I was the last one who did the searching, and  
17 that was the fax machine, and that was probably approximately  
18 between 8:00 and 8:30 that night.  
19 Q. Is it your testimony that it is your understanding that the  
20 reason the search ended and that other materials were left  
21 there --  
22 MS. McEVOY: Let the record reflect that Mr. Litt is  
23 leaving the room.  
24 THE COURT: So noted.  
25 A. Could you repeat the question.

SOUTHERN DISTRICT REPORTERS, P.C.